

REMARKS

Applicants wish to thank the Examiner for the courtesy extended in an interview conducted on February 17, 2005 which materially advanced the prosecution of this case.

I. Status of the Claims

Claims 1-8, and 10-25 are pending in this application, of which claims 1, 17, 20, 23, and 24 are in independent form. Each of the independent claims has been amended. Claims 9, 26 and 27 have been canceled. No new matter has been added.

In the September 29, 2004 Office Action, Claims 6 and 23 were rejected under 35 U.S.C. § 112, second paragraph. Claims 1-3, 6-8, 15-18 and 20-27 were rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent 6,231,900 ("Hanke"). Claims 1-8, 10, 13, 14, 17, 20 and 22-26 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by EP 0150934 (the "Cherukuri EP '934 application"), and claims 1-6, 8, 10-13, 17, 20, 23, 24, 26 and 27 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent 5,284,659 (the "Cherukuri U.S. '659 patent"). Claim 19 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hanke in view of U.S. Patent 6,099,880 ("Klacik et al.").

Each of these rejections is respectfully traversed in light of the foregoing amendment and these remarks.

II. Amendments to the Claims

Claims 1, 17, 20, 23 and 24 have been amended along lines discussed in the February 17, 2005 interview. Specifically, all of the amended claims are now directed to a "hard candy" (claims 1, 23 and 24), or a corresponding method of making

(claim 17) or using (claim 20) a hard candy. “Hard candy” is generally understood to connote a brittle confectionery item, clearly distinct from chewing gum, for example.

To further define the confectionery product, the confectionery base in each of the salivation region and the oral comfort region is now claimed as a “sugar base or a sugarless base” in all of the claims. A “sugar base or a sugarless base” further identifies the claimed confectionery item to one of ordinary skill in the art as a hard candy.

Dependent claim 3 is limited to a particular Markush group of sugar bases. Dependent claim 5 is limited to a particular Markush group of sugarless bases. Independent claim 23 has been amended so that the confectionery base of each regions is “selected from” a Markush group which includes the preferred sugar bases and the preferred sugarless bases.

As amended, claims 1 and 17 require that the product comprises 50 to 99.5 percent by weight confectionery base. This limitation finds support in the application as filed, at page 9, lines 20 to 25, and to some extent simply clarifies what is meant by “base.” This amendment also serves to distinguish certain prior art, which contains ingredients alleged to read on either the salivation agent or the oral comfort ingredient, but wherein the ingredients are not used in a base in a salivation region or oral comfort region.

Finally “proteins” has been deleted from the Markush group of oral comfort ingredients in all of the claims.

It is believed that all of the claims, as amended, are allowable over the prior art of record, for the reasons set forth in previous responses filed by the applicants, and also for the reasons relating specifically to the revised claims, set forth below.

III. Rejection Under 35 U.S.C. § 112

The Examiner objected to the terms “salt enhancer” and “monosodium glutamate enhancer.” The term “salt enhancer” is generally understood in the art to refer to “compounds that potentiate or amplify the taste of sodium chloride in foods.” As evidence thereof, applicants attach herewith a copy of U.S. Patent No. 5,370,882, from which the above quotation is taken (see col. 1, lines 40-46). A “monosodium glutamate enhancer,” likewise is a compound that potentiates or amplifies the taste or effect of monosodium glutamate. As evidence that this term would have been understood to one of ordinary skill in the art, applicants submit herewith a copy of U.S. Patent No. 4,156,029, which describes a compound for “enhancing” the “monosodium glutamate like flavor characteristics” in food (see Abstract). Applicants submit that claim terms are not indefinite simply because they are set forth in functional terms, and applicants respectfully request that the rejection be reconsidered and withdrawn.

IV. Rejections Over The Prior Art

A. 35 U.S.C. § 102(b) rejection over U.S. Patent No. 6,231,900 (Hanke)

The Hanke patent discloses a confectionery product with a flavor composition and a coolant composition in discrete regions thereof (col. 2, lines 16-18). According to Hanke, “multi-component confectionery products are known,” (col. 1, line 46). Therefore, the alleged invention in Hanke is the separation of coolants and flavors in separate regions (see col. 1, line 66 to col. 2, line 3). Example 1 and the Tables in column 10 show the preferred ingredients of the respective compositions. In the Office Action, composition A is said to read on the claimed oral comfort region and composition B is said to read on the claimed salivation region (Office Action, page 3).

The rejection relies on the presence of gelatin in region A to read on the claimed oral comfort ingredient because gelatin is a protein (Office Action, page 3). However, as amended, the oral comfort ingredient is selected from the group consisting of lipids, surfactants and mixtures thereof. Proteins is not included. Therefore, Hanke does not meet the limitations of the oral comfort ingredient set forth the independent claims.

Moreover, the gelatin ingredient in Hanke is a base and it is not concentrated in one region or the other (see the Tables at col. 10). For at least the foregoing reasons, Hanke is not believed to read on any of the claims, and applicants respectfully request that the rejection be withdrawn.

B. 35 U.S.C. § 102(b) rejection over the Cherukuri EP '934 application

The Cherukuri EP '934 application reference discloses a two-sided chewing gum, i.e., separate regions each having a surface on the exterior of the product (see page 11, Example II). However, the compositions described all comprise a gum base. As amended, the present claims are directed to hard candy, having a sugar base or a sugarless base. Therefore, the Cherukuri EP '934 application does not read on the invention recited in any of the independent claims.

Further, the Cherukuri EP 934 application does not disclose a separate region in which an oral comfort region selected from a lipid, surfactant, or a mixture thereof, is concentrated. The Office Action asserts that lecithin is the oral comfort ingredient (Office Action, page 4). However, lecithin is present in equal concentrations in both regions of the product. Therefore, for at least this additional reason, the Cherukuri EP '934 application does not read on the present independent claims.

C. 35 U.S.C. § 102(b) rejection over the Cherukuri U.S. '659 patent

The Cherukuri U.S. '659 patent discloses a first flavor ingredient in a hydrophilic composition and a second flavor ingredient encapsulated in a hydrophobic composition. (See, e.g., col. 2, lines 53-68). The hydrophobic composition contains a bioadhesive which extends the flavor impact of the hydrophobic region. (See col. 2, line 53 to col. 3, line 5). It is believed that Example 1 (column 12) is alleged by the Examiner to read on the rejected claims. Specifically, it is believed that the Office Action asserts that copper gluconate (a salt) in the “shell” region is alleged to read on the salivation agent in a salivation region, and that one or more oils in the “core” region are alleged to read on the oral comfort ingredient.

However, as amended, all of the claims require that the oral comfort ingredient is in a confectionery base, which is a sugar base or a sugarless base. The lipid ingredients disclosed in the Cherukuri '659 patent are not in a sugar or sugarless base, and therefore, the reference does not read on the claims.

Moreover, the disclosure in the Cherukuri '659 patent does not suggest that copper gluconate is present in an amount sufficient to promote salivation. In fact, the specification suggests otherwise, as it is listed as a “breath deodorant.” Again, individual ingredients from the prior art have been identified in the Office Action without regard to their functional attributes in the subject composition.

D. 35 U.S.C. § 103 Rejection Over Hanke in view of Klacik

Klacik is relied upon as teaching a method of depositing confectionery mixtures into a mold having separate regions. Klacik, however, does not overcome the deficiencies of Hanke with respect to independent claim 17. Specifically, Klacik does

not teach or render obvious an oral comfort ingredient selected from lipids, surfactants and mixtures thereof which is maintained in an oral comfort region in a hard candy, where the hard candy also has a salivation region, and where the regions are maintained as separate and distinct regions having surfaces on the exterior of the product. Applicants submit that the obviousness rejection should also be withdrawn.

V. Conclusion

The remarks above focus on the amendments to the claims which have been introduced to distinguish even more clearly the invention from the cited prior art. Specifically, the Markush group of oral comfort ingredients is now limited to lipids, surfactants and mixtures thereof. Hanke does not disclose these components in an appropriate context, and should be removed as prior art. As amended, the claims are directed to a hard candy. The Cherukuri EP '934 application discloses chewing gum, and clearly does not anticipate the claims. The amended claims, set forth that both the oral comfort region and the salivation region comprise a sugar base or a sugarless base. The Cherukuri '659 patent does not disclose a lipid or any other oral comfort ingredient in a sugar base or a sugarless base. Therefore, the Cherukuri '659 patent clearly does not anticipate the present claims. For at least the foregoing reasons, applicants respectfully request that the respective rejections over these references be withdrawn.

In general, prior art has been identified during the course of prosecution that teaches plural regions. Prior art has also been identified that teaches individual ingredients, such as an acidulent, a lipid, etc. However, nothing in the prior art of record teaches or fairly suggests the overall design of the claimed product, which is a hard candy in which: (1) a salivation region and an oral comfort region are separate and distinct; and

wherein (2) each region has a surface on the exterior of the product; (3) the salivation region contains a salivation agent which is concentrated in the salivation region; (4) the salivation agent is in a sugar or sugarless confectionery base; (5) the salivation ingredient is present in an amount effective to stimulate the flow of saliva; (6) the oral comfort region contains an oral comfort ingredient selected from lipids, surfactants, and mixtures thereof, which is concentrated in the oral comfort region; (7) the oral comfort ingredient is in a sugar or sugarless confectionery base; and wherein (8) the oral comfort ingredient is present in an amount effective to lubricate, coat or moisten the oral cavity. Applicants submit that if each of these limitations is given weight, the cited prior art references, whether taken alone or in combination, neither anticipate nor render obvious the claimed invention.

The claims in this application not specifically addressed in these remarks are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brendan Mee", written over a horizontal line.

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